UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.

In the Matter of: **UNITED STEEL PAPER & FORESTRY RUBBER MANUFACTURING ENERGY ALLIED INDUSTRIES AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC,** **Charging Party,** **-and-** **ROEMER INDUSTRIES, INC.,** **Respondent.**	**CASE NO. 08-CA-124110** **ADMINISTRATIVE LAW JUDGE DAVID GOLDMAN**

ROEMER INDUSTRIES, INC.'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION AND MEMORANDUM OF LAW IN SUPPORT

December 3, 2014

MATTHEW D. AUSTIN
Roetzel & Andress, LPA
PNC Plaza
155 East Broad Street, 12th Floor
Columbus, OH 43215
Telephone: 614.463.9770
Facsimile: 614.463.9792
Email: maustin@ralaw.com
Attorney for Respondent Roemer Industries, Inc.

I. STATEMENT OF EXCEPTIONS

Pursuant to Section 102.46 of the Board's Rules and Regulations, Respondent Roemer Industries, Inc. hereby excepts to the following portions of the Decision of Administrative Law Judge David Goldman, issued in the above-captioned case. Specifically, Respondent files the following exceptions to the Administrative Law Judge's Decision (ALJD):

1. ALJ Goldman Erred by Vacillating between Whether He Strictly Applied the Federal Rules of Evidence;

2. The ALJ Erred by Excluding Relevant Testimony Regarding the Underlying Haas Grievance, Thereby Preventing Respondent from Developing its Theory of the Case;

3. The ALJ Erred by Substantially Minimizing the Level of Bullying Endured by Johnson;

4. The ALJ Erred by Placing Too Much Weight on the Absence of Information in Fraley's Note to Merrick's File and the Timing of when that Note was Created; and

5. ALJ Goldman Erred by Not Applying *Wright Line*, Since it is the Most Appropriate Test to Use When Reviewing Employer Discipline for Conduct Between Coworkers.

II. RESPONDENT'S BRIEF IN SUPPORT OF EXCEPTIONS

A. Introduction

On November 5, 2014, following a hearing on the Complaint in the above captioned matter, Administrative Law Judge David Goldman (ALJ Goldman) issued his decision (Decision) in the matter. The unfair labor practice allegations before ALJ Goldman concerned the disciplining of a union steward and grievance committee member for their conduct related to the investigation of a grievance.

For the reasons set forth below, Respondent respectfully excepts to ALJ Goldman's exclusion of relevant testimony, giving inappropriate weight to certain testimony, applying the incorrect legal analysis, and vacillating between whether he strictly followed the Federal Rules of Evidence.

Through these Exceptions, Respondent again asserts that disciplining employees Merrick and Dolata for bullying co-worker Johnson–which bullying resulted in uncontrollable, physical shaking–was permitted under the National Labor Relations Act.

B. Exception 1: ALJ Goldman Erred by Vacillating between Whether He Strictly Applied the Federal Rules of Evidence

Judge Goldman insisted that the hearing be conducted with strict compliance to the Federal Rules of Evidence. However, the NLRB Rules and Regulations state that the rules of evidence need not be strictly applied:

> *Rules of evidence controlling so far as practicable*.—Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States…

29 C.F.R. § 102.39. *See also NLRB v. Capitol Fish Co.*, 294 F.2d 868, 872 (5th Cir.1961) ("[The] peculiar characteristics of administrative hearings justify certain departures from district court rules."). As an example of a permissible departure, in *Capitol Fish*, the evidentiary rules were relaxed to admit hearsay evidence. *Id.*

The ALJ ruled that "anything more than a summary of the Haas grievance . . . is not relevant to the proceeding." Dec. at 8 fn.7. He believed that Respondent's claim that Merrick attempted to get Johnson to change his testimony was based exclusively on hearsay. Dec. at 9. Putting aside for a moment whether hearsay evidence is Respondent's only basis, the Board's own Rules and Regulations governing these proceedings allow for a relaxation of the rules of evidence. As held in *Capitol Fish*, hearsay evidence is particularly the type of evidence for which an ALJ should err on the side of inclusion. An ALJ, unlike a juror, is not as likely to unfairly prejudice a party by giving undue weight to hearsay testimony.

In basing his decision on the totality of the circumstances, Judge Goldman allowed the parties to introduce some hearsay evidence. Yet he denied the parties the opportunity to provide more than a cursory review of the underlying Haas grievance. This was improper. Because the ALJ allowed the discussion of some hearsay testimony, he should have also allowed for a more detailed review of the Haas grievance. Doing so would have provided support for and further corroboration with the hearsay testimony. Instead, neither party was allowed to establish the details and merits of the Haas grievance, to the grave detriment of Respondent.

ALJ Goldman mentioned that the merits of the Haas grievance are not relevant and that Respondent cannot claim that a union is prohibited from investigating a meritless grievance. Tr. 147. This is not Respondent's position. Respondent is well aware that a Union may investigate any grievance it desires. But, when corroborated testimony indicates that an employee was asked to change his story regarding an ongoing grievance, the merits of the grievance become directly probative of whether the Union would heavy-handedly seek Johnson to change his testimony. Respondent's position is that the merits of the Haas grievance are directly relevant to whether Merrick asked Johnson to change his story.

In light of the need to understand the merits of the Haas grievance, and the ALJ's desire to consider the totality of the circumstances, the rules of evidence should have been relaxed to allow testimony on the merits of the Haas grievance.

C. Exception 2: The ALJ Erred by Excluding Relevant Testimony Regarding the Underlying Haas Grievance, Thereby Preventing Respondent from Developing its Theory of the Case

Even if the rules of evidence are strictly applied in this case, they require the inclusion of relevant evidence. Respondent's theory of the case is highly relevant and should have been developed, especially when the ALJ's decision turned on the totality of the circumstances.

Evidence is relevant and admissible if it has a tendency to make a fact of consequence more or less probative than without the evidence. Fed. R. Evid. 401. "Relevancy does not depend upon the conclusiveness of the testimony offered, but upon its legitimate tendency to establish a controverted fact. Relevancy is that quality of evidence which renders it properly applicable in determining the truth or falsity of the matter in issue between the parties to a suit." *Interstate Commerce Comm'n v. Baird*, 194 U.S. 25, 44, 24 S. Ct. 563, 569, 48 L. Ed. 860 (1904).

The fact of consequence made more probable with the Haas grievance is that Merrick and Dolata had a motive to and tried to get Johnson to change his story. Without fully repeating the arguments from Respondent's post-hearing brief, which are incorporated herein by reference, Respondent argues that the merits of the Haas grievance are relevant to the instant case—the more that Haas's grievance lacked merit, the more probable it is that Merrick would have needed an employee to change his story about the underlying facts. This establishes and further corroborates the claim that Merrick tried to get Johnson to change his story.

Judge Goldman noted that the issue of tolerance limits went unmentioned at trial despite being the focus of Respondent's pre-trial position paper. Dec. at 4. This is not true. Respondent sought testimony at trial regarding the tolerance limits and on what was originally said regarding Haas's discipline for producing unsquare and different sized parts. Tr. 146-49. The ALJ, however, did not permit enough discussion of the Haas grievance to explain why the merits of this case ultimately turn on the likelihood that Merrick and Dolata needed–in any way possible–to convince Johnson to change his story.

The ALJ also incorrectly discounted Respondent's suggestion that Merrick, Johnson, and Dolata were conspiring to hide what was said in their conversation. He did so based on his opinion that the argument was prompted "simply on the lack of first-hand evidence." Dec. at 9.

First, if Merrick, Johnson, and Dolata were conspiring to align one another's testimony, there is little chance it would be supported by "first-hand evidence." Any inference of conspiracy would need to come from logical inferences based upon the totality of the circumstances. This alone necessitated a greater discussion of the Haas grievance.

Second, Respondent's claim is corroborated by the clear and credible testimony of Fraley and O'Toole, who both testified on multiple occasions throughout trial that Johnson originally said that Merrick tried to get him to change his testimony. Tr. 24, 25, 26, 34, 42, 44, 57, 149, 150.

Third, it is not surprising that the ALJ saw little support for Respondent's claims, Dec. at 9, because Respondent was entirely prohibited from developing its core theory of the case. Had Respondent been able to develop its theory, Respondent would have established that the only logical explanation for why Merrick and Dolata approached Johnson was that they were trying to get him to change his story.

Additionally, whether Johnson and Dolata are friends or that Johnson and Merrick have continued to work together without incident is, contrary to Judge Goldman's opinion, irrelevant. Dec. at 7. It is entirely logical for a friend or coworker to attempt to get another employee to change his story without causing damage to the relationship or escalating to physical threats. In fact, if coworkers are particularly social and cordial with one another, they might even be more likely to casually ask or pressure each other into changing a past statement. While this might mean that no bullying was going on, as pointed out in Respondent's post-hearing brief, soliciting false testimony is not protected activity by any stretch of the imagination. The fact of the matter remains that Johnson no longer cares about this incident and has nothing to gain by supporting

the underlying discipline, even if it means departing slightly from his original testimony. Ultimately, he has no continued interest in whether Merrick and Dolata's suspensions are upheld.

Lastly, ALJ Goldman said "I go with what makes sense." Dec. at 10. In trying to go with what makes sense, the ALJ discounted Respondent's theory that Merrick and Dolata had an incentive to get Johnson to change his story. An incentive was present because of what Johnson previously stated in regards to the Haas grievance and because of Merrick's inability to obtain a favorable grievance resolution without acting on such motive.

The ALJ did not allow a complete discussion of the circumstances leading up to the discipline of Merrick and Dolata. Instead, he claims to have reviewed the totality of the circumstances, except for the merits of the Haas grievance regarding motive. Having incorrectly limited testimony regarding relevant factual evidence, the ALJ therefore came to an erroneous conclusion on "what makes sense." Because of his error in prohibiting relevant evidence, his Decision should not be enforced.

D. Exception 3: The ALJ Erred by Substantially Minimizing the Level of Bullying Endured by Johnson

No protection is afforded to union stewards who, while investigating a grievance, threaten and harass a fellow union member. *All American Nut Co.*, 61 LA 933, 941 (Arb. 1973) (upholding the termination of a union steward who attempted to persuade other employees to testify falsely on his behalf). Forceful union advocacy is sometimes lawful, but "at the point that an individual exhibits disrespectful body language that forceful style morphs into bullying. *State of Washington-Employment Security Dep't*, AAA Case No. 75 390 00002 06 (Skratek, Arb. July 24, 2006) ("Workplace behavior that does not rise to the level of violence, perceived threats, or perceived intimidation but does rise to the level of disrespect is still inappropriate behavior.")

Employers are permitted to discipline workers for engaging in behavior that compromises a safe, respectful working environment for fellow employees. *Penske Truck Leasing Co.*. 122 LA 1355, 1358 (Arb. 2006) (upholding claim to "take this outside" and calling the coworker and his father "whining suckasses"). In fact, employers are obligated to provide employees with a safe work place. *Id*. *See also, Washington, above*.

In facts remarkably similar to the instant case, a 30-year employee was upset and called a co-worker a "tattletale" and spread a rumor about damaging the co-worker's car. *Thermo King Corp.*, 106 LA 481 (Arb. 1995). Testimony differed whether the employee made any other comments. After investigating the incident, the employee was suspended. Despite the union's argument that the comments were "just conversation," the Arbitrator focused on the effect the comments had on the recipient – the employee was scared and the 3-day suspension was upheld.

For even more support, Respondent relies on *Washington* where a union steward investigating an employee's complaint used aggressive body language during a discussion with the employee's manager. The steward smacked his fists into his hands, shook and pointed his finger, and shook his hand in a dominant, aggressive manner. *Washington*, above at 3. The Arbitrator there found that the employer had a reasonable, good faith basis for suspending the steward although the manager never felt threatened or intimidated during the conversation.

Here, the level of bullying endured by Brad Johnson far surpassed the levels found to be sufficient to discipline union stewards in the above examples. By way of background, first, Johnson's poor heart condition is well known by all employees at Roemer, including Dolata and Merrick. Tr. 92, 123. Second, Merrick, a 22 year employee and Dolata, a 16 year employee both know that Johnson always wants to be left alone. Tr. 78, 92, 99, 146. Undeterred, Merrick and

Dolata engaged Johnson before work causing him to physically shake, and Merrick continued his bullying antics even while being told by his supervisor to stop bullying Johnson. Tr. 92.

Shortly after being confronted by Merrick and Dolata, Johnson saw his supervisor Ann Fraley. Tr. 24. He was visibly shaking and asked to speak with Fraley in private. *See, e.g.*, Tr. 24 ("He said, 'Look at me, look at my hands. I'm shaking. Can I talk to you?"); Tr. 34 ("[H]e was shaking and that was he was upset…."); Tr. 42 ("[H]e showed me his hands were shaking…"); Tr. 129 ("I was shaking…"). Fraley, having known Johnson for roughly 30 years, knew this uncontrollable reaction was out of the norm, so she took Johnson to her office to talk. Tr. 24-27. Trembling, Johnson told Fraley that Merrick and Dolata called him over for a conversation next to the smoking area by the back door with the sole purpose of "trying to get him to change his wording" about the Hass Grievance. Tr. 24, 25, 34, 44. Johnson emphatically said he "felt harassed" by the conversation, which may explain why he was shaking and scared. Tr. 24-25.

Fraley called Merrick into her office to discuss the situation with him. With Johnson still in her office, she told Merrick (what Dolata had already told him (Tr. 94)) that Johnson does not want to be involved in the Haas Grievance. Tr. 27. Merrick became agitated, walked out, slammed the door, and yelled that Johnson was a "backstabber" as he charged through the shipping department en route back to his workstation. Tr. 28-30 Merrick continued harassing and bullying Johnson by telling other employees that they should not trust Johnson because Johnson is a backstabber. Tr. 58-60, 133. The next morning Johnson sought additional help from Fraley to stop Merrick's terrorizing behavior. Tr. 151-52.

While the testimony is clear that a grown man with a bad heart had to repeatedly seek protection from management because of bullying behavior by a union steward acting under the

guise of grievance investigation. Yet, Judge Goldman diminished both the stewards' actions to the point of justifying their outlandish and egregious behavior.

He begins by concluding that nothing in "Dolata and Merrick's conduct toward Johnson removed their conduct from the ambit of protected activity." Dec. at 14. This is false. *See, All American Nut, supra, Washington, supra, Penske, supra, and Thermo King, supra*. He then concludes that the evidence "does not show any threats, intimidation, profanity, or even hostility or raised voices directed towards Johnson." *Id*. After that, he parenthetically cited cases for the proposition that there would be nothing left of § 7 rights if every time employees exercised them in a way that was somehow offensive, annoying, or angered someone, they were subject to discipline. Dec. at 14.

While the Decision focuses on employees being annoyed and otherwise upset to help the Judge reach his distorted conclusion, it misses the mark when applied to the facts here. The evidence here does not suggest Brad Johnson was annoyed; he was scared. It does not imply he was offended; he suffered heart palpitations. He was not otherwise upset; he was scared and shaking.

The ALJ continued, "Merrick's comments contained no threats, no profanity, no abusiveness, or violence. Dec. at 16. He did not confront Johnson physically or otherwise or make his comments to his face. *Id*. Unrelenting, Judge Goldman cited cases for the propositions that an employer violated the Act by disciplining an employee who called another a scab,[1] that some profanity must be tolerated during confrontations such as when a steward threatened to file internal union charges against a co-worker and told him "You've got no goddamn business being

[1] *Nor-Cal Beverage Co.*, 330 NLRB 610 (2000)

here," and "The best thing you could do is get the hell away from us."[2] A fatal flaw to the Judge's reasoning is that those cases do not apply here.

The focus here should be placed on the effect Merrick and Dolata had on Brad Johnson, not whether one of them used profanity or became violent. To be sure, Judge Goldman is not concluding that only when profanity, abuse, and violence are used can a person be bullied. Likewise, calling someone a scab to their face once is vastly different from repeatedly accusing a co-worker of being a backstabber behind his back after being counseled by a supervisor. Bullying, by definition, focuses on the effect words and actions have on the target, not on the specifics of whether profanity or violence were used.

Unfortunately, the ALJ minimized the severity of Johnson's heart ailment. Dec. at 14. Specifically, he stated, "By no evidence does Johnson's heart condition render him so fragile that employees cannot speak to him about a grievance while he takes a break before work." Dec. at 14. Judge Goldman is not a physician. He is not qualified to opine on Johnson's limitations as a result of his poor heart condition. The only time Judge Goldman ever saw Johnson was for the few minutes he was on the witness stand and even then their interaction was extremely limited.

For support of his unfounded medical opinion, the ALJ concluded that Johnson "testified without incident at the unfair labor practice hearing. (He may not have wanted to testify, but that is a different issue.)" Dec. at 14. To reach this conclusion, the ALJ hides the difference between being forced to testify pursuant to a federally-issued subpoena and being forced to talk with co-workers before his shift. There is a significant difference between the two that the Judge either did not recognize or chose to ignore.

[2] *Tilford Contractors*, 317 NLRB 68, 69 (1995)

One of the most troubling passages of the Decision is where the ALJ determines that Johnson "was free to complain to management. But management was not free to punish Dolata or Merrick." Dec. at 14. If true, the Company was left with zero ability to maintain a safe workplace, to diffuse a hostile work environment, or to protect a weaker employee from being bullied. Surely this is not the Judge's true intention, as it certainly is not required by any provision of the Act or case law arising therefrom.

E. Exception 4: The ALJ Erred by Placing Too Much Weight on the Absence of Information in Fraley's Note to Merrick's File and the Timing of when that Note was Created

At some point after Fraley met with Johnson and Merrick in her office she jotted down some information about the meeting and placed the note in Merrick's personnel file. Judge Goldman repeatedly referenced this small note and fixated on what was not written on the note instead of the evidence surrounding the origination and reason the note was placed in Merrick's file in the first place. Specifically, he concluded–without any evidentiary support–that had:

> Johnson's complaint to Fraley been that Merrick was attempting to get him to change his statement–a matter that Respondent's brief emphasizes as the heart of the misconduct justifying discipline–one would expect to see the claim mentioned in the contemporaneous statement of the incident that Fraley wrote immediately after meeting with Johnson and Merrick for the very purpose of documenting the offense. However, Fraley's statement says absolutely nothing about Merrick and Dolata attempting to have Johnson change his statement prior. Nothing. Were the allegation true, the absence of it from the contemporaneous prior statement is inexplicable.

Dec. at 9.

First, the ALJ's conclusion that the note was a "contemporaneous statement of the incident" is unfounded and erroneous. According to the Merriam-Webster Dictionary, "contemporaneous" means existing or happening during the same time period. According to Fraley, she jotted down the note after she met with Johnson and Merrick, most likely the next

day. Her memory on whether she wrote the note on the same day or the following day is unclear likely because the action happened a year prior to her testifying on the witness stand.

In any event, Fraley testified that she did not take any notes as part of her investigation. Dec. at 10. Judge Goldman all but calls her a liar for this statement, when in fact no testimony was elicited as to whether she considered the meeting in her office an "investigation." If she did not consider it an investigation, then there would be no "notes as part of [her] investigation." Similarly, if she interpreted the question to mean actively taking notes as people are talking, akin to a what a student does during a lecture, then she testified truthfully that she did not take such notes; rather she wrote something down after the meeting was over. A statement to the file after a meeting does not equal taking notes as part of an investigation.

With continued fixation on the temporal proximity of documenting the event, the ALJ scrutinized Fraley's testimony that she got the idea to put a note in Merrick's file from Respondent's Human Resource Officer Connie Bistarkey. Specifically, Fraley testified that she told Bistarkey that Merrick was "trying to get [Johnson] to change his wording about [Haas'] grievance" and that Bistarkey told her "don't forget to document that." Dec. at 10. This occurred on September 11, 2013, according to Fraley. *Id*. But Bistarkey testified that she did not know about the incident until reading the write-up reports on September 12, 2013. *Id*. The timeline of the two witnesses, disagreeing by a single day (a year after the event occurred), is hardly a material difference warranting the Judge's adverse inference drawn against Fraley.

Equally confounding is the blind eye Judge Goldman turns on the fact that Fraley is a prior bargaining unit member without any formal human resource training. She is not trained to "document, document, document." Conversely, Bistarkey is a trained Human Resource Officer for Respondent, so documenting a meeting like the one that occurred between Merrick, Johnson,

and Fraley would be important to her. Yet, no testimony exists indicating that Bistarkey told Fraley what to document or how to document it. Instead, Bistarkey just told Fraley to document the meeting, and Fraley documented it in a manner she thought was appropriate.

Unfortunately for Respondent, the Judge's zeal to discredit Fraley resulted in him speculating what he–a judge whose job is to rule on workplace disputes–would have done in the same situation. He then tarnishes Fraley for not taking identical measures. Finding that Fraley did not mention Merrick's attempt at bullying Johnson into changing his story "inexplicable and unexplained," is beyond the evidence, illogical, and leads to an erroneous conclusion. Because of the above, the Judge's Decision should not be enforced.

F. Exception 5: ALJ Goldman Erred by Not Applying *Wright Line*, Since it is the Most Appropriate Test to Use When Reviewing Employer Discipline for Conduct Between Coworkers

The ALJ cites to *Postal Service*, 252 NLRB 624, 624 (1980), for the proposition that *Wright Line* should not apply here because a union steward's effort to investigate grievances is within the scope of her protected concerted activity. Judge Goldman is wrong. First, *Postal Service* involved discipline for conduct of a union steward for acting insubordinately toward a supervisor. Second, the Board's decision never prohibited the use of *Wright Line*. And perhaps most notably, *Postal Service* was never enforced by the Ninth Circuit and thus carries very little persuasive authority.

ALJ Goldman also cited *Consumer Power Co.*, 245 NLRB 183 (1987), as authoritative, but that case did not involve employer discipline for conduct between coworkers, either. Instead, like *Postal Service*, it involved conduct between a supervisor and a union steward. Importantly, *Consumer Power Co.* was issued prior to *Wright Line* so it did not have the opportunity to

address its application. These critical distinctions highlight that Judge Goldman prematurely dismissed applying *Wright Line* to this case.

Whether *Wright Line* is appropriate is discussed in *United States Postal Serv. & Nat'l Ass'n of Letter Carriers Branch 11*, 360 NLRB No. 74 (Apr. 24 2014) (hereafter *USPS*). There, the Board noted that *Wright Line* does not typically apply when an employer defends disciplinary action based on employee misconduct toward a supervisor. That case, however, did not prohibit the use of *Wright Line* when examining cases of discipline when union stewards bully co-workers. However, *USPS* should not be followed because it, as well as *Postal Service*, involved discipline of a union steward stemming from the steward's conduct toward a supervisor.

Despite Judge Goldman's discount of the level of bullying or solicitation of false testimony, the cases above do not determine whether *Wright Line* should apply to circumstances where an investigating union steward is disciplined for conduct toward a coworker. The policy rationales behind *Atlantic Steel* and the ALJ's totality of the circumstances analysis do not similarly apply to interactions between coworkers. In the line of cases that involve conduct between management and a union steward, such as *Atlantic Steel*, each relaxed the need for mutual respect and takes into account the likelihood that tempers will flare when one side must confront the other over a usually contentious issue.

This policy does not transfer to conduct between coworkers. Rank and file employees should not be subjected to conduct that would, at all other times, be inappropriate. Disrespect, bullying, and other inappropriate conduct cannot be tolerated when directed at innocent bargaining unit members. This is especially true when a union steward has actual knowledge of the coworker's aversion to conflict and expresses a desire to be left alone.

If the Board determines that *Wright Line* is not appropriate for analyzing Merrick and Dolata's one-day suspensions, it should be followed when addressing Merrick's three-day suspension. The ALJ omitted *Wright Line* because he incorrectly found that Merrick's comments about Johnson were a direct outgrowth from, and wholly related, to his protected activity. Calling a coworker a "backstabber" when previously directed not to, is not related to a grievance investigation, and is not a protected activity. As a rank and file employee, Johnson, is unprepared for having to suffer conduct exclusively reserved for union stewards and supervisory personnel. Johnson should not, without recourse, become the target of inappropriate conduct from a coworker because he is interviewed regarding another employee's discipline. Because the ALJ erred in not applying *Wright Line,* the Decision should not be enforced.

III. CONCLUSION

It is respectfully submitted that the record, as set forth at the hearing, and the evidence prohibited from being set forth at the hearing, amply support Respondent's exceptions to the Administrative Law Judge's Decision. Accordingly, Respondent respectfully requests that the Board refuse to enforce that Decision.

Respectfully submitted,

/s/ Matthew D. Austin

Matthew D. Austin (0076619)
Roetzel & Andress, LPA
PNC Plaza
155 East Broad Street, 12th Floor
Columbus, OH 43215
Telephone: 614.463.9770
Facsimile: 614.463.9792
E-mail: maustin@ralaw.com
Attorney for Respondent
Roemer Industries, Inc.

PROOF OF SERVICE

A copy of the foregoing was served on December 3, 2014, pursuant to Section 102.114(i) of the Board's Rules and Regulations, by electronic mail to the following:

LERVAL M. ELVA
IVA Y. CHOE
Anthony J. Celebrezze Federal Building
1240 East 9th Street, Suite 1695
Cleveland, OH 44199-2086
Telephone: 216.522.8180
Email: LerVal.Elva@nlrb.gov
Iva.Choe@nlrb.gov
General Counsel for NLRB

NANCY A. PARKER
60 Boulevard of the Allies
Five Gateway Center
Pittsburgh, PA 15222
Telephone: 412.562.1679
Email: Nparker@usw.org
Attorney for United Steelworkers

/s/ Matthew D. Austin
Matthew D. Austin